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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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[212-416-8561]

August 18, 2008

By Facsimile (212) 805-7933
Hon. Andrew J. Peck
United States Courthouse
500 Pearl Street, Rm. 1370
New York, New York 10007-1312

MEMO ENDORSED *pe*

Re: Joseph v. Fischer, et al., 08-CV-2824 (PKC)(AJP)

Your Honor:

I am an Assistant Attorney General in the Office of Andrew M. Cuomo, Attorney General of the State of New York, counsel for the served defendants in the captioned matter. I write, respectfully, to request that defendant Commissioner Brian Fischer not be required to respond to plaintiff's interrogatories which are attached for Your review.¹

As the Commissioner of the New York State Department of Correctional Services, Brian Fischer has tremendous constraints placed on his time and schedule. As Your Honor is aware, it is defendants' contention, as set forth in their August 15, 2008, letter to Judge Castel, that Commissioner Fischer was not personally involved in the alleged constitutional violations set forth in the complaint. In addition, a review of plaintiff's interrogatories, makes clear that they are either objectionable, capable of being responded to by officials other than Commissioner Fischer, or so specific as to make it unlikely that Commissioner Fischer will be able to respond to them.

¹At the July 17, 2008 conference, Your Honor extended Commissioner Fischer's time to respond to plaintiff's interrogatories until Friday, August 22, 2008.

In light of these reasons, defendants respectfully request that Commissioner Fischer be excused from having to respond to plaintiff's interrogatories.

Thank you.

Respectfully submitted,

Neil Shevlin

Neil Shevlin
Assistant Attorney General

Attach.

cc: Rodney Joseph (by first class mail w/encl.)

MEMO ENDORSED

8/18/08
re interrogatories can be answered
by another senior official at Sing
Sing by court Sept or April Sept
interrogatories at Sing Sing at (Hickam)
the court. However, if I want to
answer for my report, I will need
to provide an affidavit for Commissioner
Fischer as to his involvement in such
report.

SO ORDERED:

[Signature]
Hon. Andrew Jay Peck
United States Magistrate Judge

my: to Joseph
on Shevlin (for)
Joseph Cortez

BY FAX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rodney Joseph

Plaintiff,

Interrogatories
By Plaintiff

-against-

08 Ci. 2824 (PKC)

Brian Fischer, Commissioner of N.Y.S.D.O.C.S.
Jane Doe (a.k.a. Ms. Calero), Commissioners Hearing Officer
Luis R. Marshall, Superintendent of Sing Sing Corr. Fac.
William A. Lee, Deputy Superintendent of Security
Keith Dubray, Acting Director of Special Housing Unit
John Doe (a.k.a. Mr. N. Ingenito), Correctional Lieutenant
Jane Doe (a.k.a. Ms. C. Cooper), Correctional Officer
John Doe (a.k.a. Mr. A. Orrico), Correctional Sergeant
James Conway, Superintendent of Attica Corr. Fac.

To: Brian Fischer, Commissioner of The State of New York Department of Correctional Services,

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff hereby request that you answer under oath the following interrogatories within 30 days. You are requested to set out each interrogatory prior to the answer directed to it.

Interrogatory #1: Before you were Commissioner of New York State Department of Correctional Services, from what dates were you Superintendent of Sing Sing Correctional Facility?

Interrogatory #2: Prior to you leaving Sing Sing Correctional Facility, what Problems where you aware of that the NAACP Organization was having?

Interrogatory #3: During the last search of the NAACP Office under your watch, what items were confiscated out of the NAACP Office?

Interrogatory #4: With all of the items you listed, were there any inmates issued a misbehavior report for said items confiscated?

Interrogatory #6: Plaintiff would like for you to identify who "Divine G" is from the NAACP Organization?

Interrogatory #6: Plaintiff would like to know if you was aware of his letters of complaint (in regards to the NAACP) written to Dr. S. Ross from the NAACP Ossining Branch?

Interrogatory #7: Plaintiff would like to know was anybody ever written up for the computers and computer disk being confiscated out of the NAACP Office when you were the Superintendent?

Interrogatory #8: Are you aware of the plaintiff being found guilty of contraband items taken out of the NAACP Organizations Office, then the same allege contraband items were then return back to the NAACP Organization after the Plaintiff was sent to Special Housing Unit?

Please take notice that a copy of the answer must be served upon the undersigned within 30 days after service of these interrogatories.

Respectfully Submitted,

6/9/08



Rodney Joseph, 97A4976
Attica Correctional Facility
P.O. Box: 149
Attica, New York 14011

cc: Commissioner

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: August 19, 2008

Total Number of Pages: 5

TO	FAX NUMBER
Neil Shevlin, Esq.	212-416-6009

TRANSCRIPTION:

MEMO ENDORSED 8/19/08

The interrogatories can be responded to by another senior official at Sing Sing (e.g., current Supt. or Deputy Supt. who was working at Sing Sing at the time of the incident). However, if defendants want to move for summary judgment, defendants will need to provide an affidavit from Commissioner Fischer as to his involvement or lack thereof.

**Copies to: Rodney Joseph (Mail)
Judge P. Kevin Castel**